IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.9 OF 2006
WITH
CIVIL APPLICATION NO.21 OF 2006

Kisan @ Krishna Bhau Kumbhar
& Ors. ..Appellant.

V/s.

Sou.Rajani Anandrao Wadikar. ..Respondent.

Mr.R.G.Ketkar for appellant.

Mr.V.B.Rajure for Respondent.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 18, 2006.

P.C. :

1. Heard.

2. The only contention raised before this court is that the conclusion reached by the court below on the question of valuation of the suit property is unacceptable. It is contended that even though the appellants/ defendants did not specifically raise the plea of valuation of the suit property as a specific ground, however, the fact remains that the respondent/plaintiff in her evidence had admitted that the value of the suit property was over Rs.25,000/-. This submission clearly overlooks that the suit was filed in the year 1986, whereas the

evidence of the respondent/plaintiff is recorded in March, 1996. She has answered the question as posed to her during the cross-examination. The price mentioned by her was obviously the prevailing price when evidence was recorded and not the price when suit was instituted. That admission will be of no avail to the appellants/defendants, especially having regard to the fact that no specific plea is taken in the written statement coupled with the fact that the appellants/defendants examined valuer as his witness. But the valuer has not categorically stated that the value of the suit property on the date of institution of suit would be above Rs.25,000/- so as to affect jurisdiction of District court before whom suit was instituted. Moreover, the appellants/defendants herein in evidence have clearly admitted that the valuation of the suit property mentioned in the suit are correct, proper and adequate. If it is so, it is not open to the appellants/defendants to now raise plea of improper valuation of the suit property in the backdrop of the pleadings and evidence which is on record as aforesaid.

3. As no other contention arises for consideration, this appeal should fail. Hence, the appeal as well as the civil application are

dismissed.